
Empire State Restaurant & Tavern Association

Report From The Executive Director...Scott Wexler

Summer 2018

New SLA Commissioner Confirmed - The New York State Senate confirmed Lily M. Fan as a new Commissioner of the New York State Liquor Authority just prior to recessing their legislative session in June. Commissioner Fan joins Chairman Bradley and Commissioner Ford as Members of the State Liquor Authority filling all three seats on the Full Board for the first time in two years.

Commissioner Fan is a graduate of Yale College and Yale Law School. She was born in Hong Kong and speaks fluent Cantonese. She is a New York City resident and was appointed a member of Community Board 4 in Manhattan in 2015. She served as the Community Board's Co-Secretary from 2016 to 2017.

Ms. Fan was previously a lawyer at the law firms of Shearman & Sterling LLP and Morrison & Foerster LLP, specializing in white-collar criminal litigation and securities class actions. She also served as Legislative Counsel in the New York State Senate in 2010. Ms. Fan founded Scandobean Productions LLC, a theatrical and film production company, in 2010. She also has a real estate business and mediates family, entertainment, and other contract disputes.

Ms. Fan is a Tony-nominated and Oliver-nominated theatre and documentary film producer. She is currently supporting numerous Broadway productions. She was recently represented on Broadway in the new plays Chinglish and Hand to God, and the revivals of Jesus Christ Superstar and Love Letters.

Ms. Fan is deeply committed to public service and has an extensive history of community involvement. She's a Member of the Board of Advisors at the Yale School of Drama. She serves as Secretary to the Board of Trustees of the Lark Play Development Center. She is the Treasurer to the Board of Directors of The Lilly Awards. She is a member of the New York City Bar Association's Land Use Planning and Zoning Committee. She is also a member of the National Committee on United States-China Relations and she serves as a trustee to both her parents' charitable foundations.

Commissioner Fan's diverse background will bring a unique perspective to the State Liquor Authority. In her brief stint on the Board to date, she has already joined with Commissioner Ford to impose a lesser fine on a retail licensee than Chairman Bradley proposed (this is why it matters to have three Commissioners) and has asked insightful questions to get to the nub of the issues before the Full Board.

Tip Credit Update - The State Department of Labor completed its final public hearing on eliminating the tip credit at the end of June. So what happens next? We wait...there is no timetable on the decision and no formal process to make a decision. Unlike an actual proposal to change a regulation which has a regimented process, this is an informal process under which the Labor Department is soliciting comments and seeking research to help them answer the question “should the tip credit be eliminated?” We’re expecting the outcome will be a report from the Department that makes a recommendation to the Governor, but even that is somewhat speculative. We could wake up one day and read a press release that announces the outcome, whatever that is, or we can never hear anything on the subject leaving the possibility of eliminating the tip credit hanging over our heads for the foreseeable future or even longer.

So what can we do in the meantime? Our priority has been to keep up the public activity demonstrating strong opposition to any change from those most effected – the serving staff. The “Supporters of the Tip Credit” Facebook page continues to bring servers into the discussion and the Restaurant Workers of America are regularly speaking out as opportunities present themselves.

Of course, even if the Governor and Department of Labor don’t pursue a change in the tip credit we still have a problem in the State Legislature. There are bills in both the Assembly and Senate to eliminate the tip credit and while they’re not going anywhere now, that could change in the future. Restaurant Opportunities Center (ROC) is not going to relent in their efforts to eliminate the tip credit. For that reason, as the Summer fades and Fall approaches we’re planning a legislative education effort to make sure legislators and candidates know how devastating eliminating the tip credit will be to our industry – especially tipped workers. Keep an eye out for future updates and our call to action!

Fake News - Two recent news stories have caused a bit of a kerfuffle with business owners due to bad information being put forward, but in these cases the fault lies with the group pushing out the stories. One story floating around is that a bill passed by the legislature this year will raise the minimum age of servers from 18 to 21. Another story reports that the legislature passed a bill granting 12 weeks of bereavement leave with pay to employees.

The bill that supposedly raised the serving age from 18 to 21 was actually an amendment to the Tax law for craft producers. While it contained some unartful language requiring the age of servers giving away tax-free samples, at no point did anyone involved in this discussion think the change impacted anyone except the craft producers. A change to the Tax law can’t change the rules under the Alcoholic Beverage Control law. But it got more people upset about the bill by claiming it could affect all licensed premises so that’s what the opponents told the press. Similarly, the legislature did pass a bill to provide for bereavement leave for employees. They amended the existing paid family leave bill to add the death of a family member as a covered situation under the law. So it’s correct that under this bill someone could theoretically claim 12 weeks of bereavement leave but it’s not additional leave – it’s part of the total annual paid leave someone can take. We spent a lot of time over the last few weeks straightening out this misinformation and hope this update clears things up for everyone.